unaware of the disclosure to the defendant's husband. In an action to recover balance of money due for such services, defendant set up the breach of an implied warranty of secrecy. *Held,* plaintiff not barred from recovery. *Easton* v. *Hitchcock* (Eng. 1912) 81 L. J. (K. B.) 395.

The contention in this case was whether or not there was in the plaintiff's contract of employment a guaranty warranting the secrecy of the servants in her employment, and of those who had been, but had left her employment. HAMILTON, J., in delivering the opinion of the court, says, "I do not think that the circumstances of this case are such as to justify us in inferring such a warranty at least as regards the period after Davis had ceased to be the plaintiff'sservant. I say nothing as to whether such a warranty exists while the service continues." LUSH, J., in a concurring opinion, states the distinction more forcibly: "If these services were rendered useless and of no benefit to the defendant by reason of default of the plaintiff herself, or by reason of the conduct of the person for whose conduct she was responsible, of course she could not use for remuneration in respect of such services thus rendered useless. * * * They were rendered useless by a person for whom the plaintiff was not responsible, as he was not acting within the scope of his employment." The decision is a novel one, and no precedents are cited, but the case seems to be rightly decided. The decided weight of authority is to the effect that a warranty will not be implied by usage or custom where none is implied by the common law. *Baird* v. *Matthewe,* 6 Dana 129; *Dodd* v. *Farlowe,* 11 Allen 426, 87 Am Dec. 726; *Barnard* v. *Kellogg,* 10 Wall. 383, 19 L. Ed. 987. "Generally speaking an implied warranty may arise as to any subject relating to the property sold, such as the title, merchantibility, fitness for the purpose intended, and genuineness of the article sold. So, too, there is a general warranty implied that goods to be manufactured shall fill the terms of the contract. There is not, however, as a rule any implied warranty of quality, or value, or even quantity." 35 CYC. 393. The warranty discussed in the principal case seems analogous to the common law warranty of quality which will not ordinarily be implied. A principal is of course, not liable for the torts of an agent committed after the termination of the agency relation. *Johnson* v. *Martin,* 11 La. Ann. 27, 66 Am. Dec. 193.

PROCESS—SUMMONS—PRIVILEGE OF NONRESIDENT PLAINTIFF.—The defendant, a nonresident, was attending court as a material witness in a suit in which he was plaintiff, and before he had an opportunity to leave the State for his home was served with summons in an action against him by the defendant in the first suit. *Held,* such service was invalid. *Roberts* v. *Thompson* (1912) 134 N. Y. Supp. 363.

The court said, "Our courts should protect a nonresident coming into this State to attend upon litigation here, whether as plaintiff or defendant, against being required to engage in other litigation here against his will." In accord with the principal case are the following: *Minnich* v. *Packard,* 42 Ind. App. 371; *In re Healey,* 53 Vt. 694; *Morrow* v. *Dudley & Co.,* 144 Fed. 441; *Halsey* v. *Stewart,* 4 N. J. Law 366; *Leatherby* v. *Shaver,* 73 Mich. 500; *Gregg* v. *Sumner,* 21 Ill. App. 110. The New York Court had previously held in

Matthews v. *Tufts*, 87 N. Y. 568, that a nonresident creditor while voluntarily attending bankruptcy proceedings for the purpose of establishing his claim, was privileged from service of summons. The rule that nonresident witnesses and nonresident defendants are privileged from service of summons as well as from arrests seems well established. *Hayes* v. *Shields*, 2 Yeates 222; *Bolgiano* v. *Gilbert Lock Co.*, 73 Md. 132; *Person* v. *Grier*, 66 N. Y. 124; *Parker* v. *Marco*, 136 N. Y. 585; *Sheehan* v. *Bradford, B. & K. R. Co.*, 3 N. Y. Supp. 790; *Sherman* v. *Gundlach*, 37 Minn. 118; *Mitchell* v. *Huron Circuit Judge*, 53 Mich. 541. In the case last cited, Judge COOLEY stated the reason for setting aside service of summons on a nonresident party-witness as follows: "Public policy, the due administration of justice, and protection to parties and witnesses alike demand it." The New York court in *Netograph Mfg. Co.* v. *Scrugham*, 197 N. Y. 377, said that it is in furtherance of the policy of the law and the due administration of justice that suitors and witnesses from abroad are privileged. From the reasons assigned for the privilege it would seem that it should extend to plaintiffs, as well as to defendants and witnesses. In *Minnich* v. *Packard, supra*, the court, in holding that a nonresident plaintiff could not be served with summons, said that suitors as well as witnesses should feel free at all times to attend judicial proceedings which necessarily require their presence, without being held to answer in some other jurisdiction an adverse proceeding against them. In the following cases, however, the courts have held that nonresident plaintiffs are not exempt from summons: *Bishop, et al.* v. *Vose*, 27 Conn. 1; *Baisley* v. *Baisley*, 113 Mo. 544; *Mullen* v. *Sanborn et al.* 79 Md. 364; *Baldwin* v. *Emerson*, 16 R. I. 304.

RAILROADS—LIABILITY TO TRESPASSERS AND LICENSEES.—Defendant railroad's trestle, which was high, narrow, and dangerous, had a narrow planking in the center upon which people were accustomed to walk, and from which plaintiff was forced to jump, to avoid being run over by defendant's train. Plaintiff sued for his injuries, and appeals from a judgment of non-suit. *Held*, "there is little substantial difference in the rule of law applicable to trespassers and licensees. If the employees of the railway company, or those in charge of the running of its trains, have knowledge that the public, either as trespassers or licensees, may be expected to be upon the track at a particular place, it is their duty to anticipate this presence, and to use proper care and diligence to avoid injuring them." *Williams* v. *Southern Ry. Co.* (Ga. 1912) 75 S. E. 572.

The general rule seems to be that the only duty owed a trespasser is not to injure him wilfully or wantonly, or by reckless and gross negligence amounting to wantonness. *Georgia Railroad Co.* v. *Fuller*, 6 Ga. App. 454, 65 S. E. 313; *Atlantic Coast Line R. Co.* v. *Riley*, 127 Ga. 566, 56 S. E. 635; *Jeffersonville etc. R. Co.* v. *Goldsmith*, 47 Ind. 43, 8 Am. Ry. Rep. 315. However, "at points where the track is constantly used by pedestrians, the company is bound to exercise special care and watchfulness, without regard to the question whether the person killed or injured was a trespasser or licensee." 2 THOMP., Neg., § 1726; *Cassida* v. *Oregon, etc. R. Co.*, 14 Or. 551;